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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53792-2019 (O&M)
Date of decision: 14.12.2023

GHALLA URF RINKU

...Petitioner

VERSUS

SATISH GUPTA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Kumar Vishav Aggarwal, Advocate
for the petitioner.

Mr. Namit Khurana, Advocate
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing impugned order dated 31.10.2019 (Annexure P-3) passed by the learned JMIC, Yamuna Nagar, whereby the application of the petitioner to examine the handwriting expert during the defence evidence was dismissed.

2. Learned counsel for the petitioner submitted that it is a case under Section 138 of the Negotiable Instruments Act, 1881, wherein at the time of prosecution evidence, the complainant-respondent had got examined one handwriting expert, who has given his report (Annexure P-1) and the accused-petitioner although was given the opportunity to cross-examine him but he filed an application for getting the signatures on the cheques compared with the

admitted signatures of the petitioner from another expert since the expert which was got examined by the complainant-respondent was a private expert and in order to ascertain the truthful position, there was no harm in getting the opinion of another expert in accordance with law.

3. On the other hand, learned counsel for the respondent submitted that once an expert has been examined, the examination of another expert would serve no purpose but will only delay the trial and it will not be in the interest of justice.

4. I have heard the learned counsel for the parties.

5. So far as the objection raised by the learned counsel for the respondent that the examination of another expert will delay the trial is not sustainable in view of the fact that even otherwise also, the trial is not progressing. Learned counsel for the petitioner has argued that the signatures on the cheques were not of the petitioner and in order to ascertain the truthful position, only one opportunity is required for examining the expert because the expert which was examined by the complainant-respondent was a private expert and no prejudice will be caused to the complainant-respondent in case one more expert is examined since the comparison of the signatures on the cheques goes into the root of the controversy.

6. The learned JMIC, Yamuna Nagar while passing the impugned order has rejected the prayer of the petitioner on the ground that there is no need of second expert since the petitioner has already examined the expert and has also observed in the impugned order that even otherwise also, the opinion of the expert is only an opinion and is not binding upon the Court.

7. This Court is of the view that considering the aforesaid totality and circumstances of the present case where the objection which has been raised by the learned counsel for the petitioner that the expert which was examined by the complainant was a private expert and the reason for getting another expert is to ascertain the truthful position with regard to the disputed signatures. Since the present case pertains to Section 138 of the Negotiable Instruments Act, 1881, which is based entirely upon the authenticity of the cheques, it will be in the interest of justice to permit the petitioner to examine the expert for the purpose of comparison of the signatures on the cheques with the admitted signatures.

8. In view of the above, the present petition is allowed. The impugned order dated 31.10.2019 (Annexure P-3) passed by the learned JMIC, Yamuna Nagar, is hereby set aside. The learned trial Court shall grant one opportunity to the petitioner for examining the expert, subject to payment of Rs.1,000/- as costs to be paid to the respondent.

14.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No